

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

**C.R.P.(N.P.D.) Nos.3582 and 3583 of 2012 and
M.P.No.1 of 2012 in CRP (NPD) No.3582 of 2012**

1.Saroja
2.N.Vasu
3.N.Prabakaran
4.N.Sudhakar
5.N.Dinesh @N.Kishore Babu
6.N.Ishwarya

...Petitioners in both CRPs

versus

1.Indirani
2.Navaneetha

...Respondents in both CRPs

PRAYER: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 13.08.2012 made in I.A.Nos.927 and 1545 of 2004 in O.S.No.92 of 1979 by the Hon'ble District Munsif Court, Ponneri.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.R.Krishnawamy

COMMON ORDER

These two revision petitions are directed against the order dated 13 August, 2012 in I.A.Nos.927 and 1545 of 2004, whereby and where

under, the learned District Munsif, Ponneri allowed the application filed by the respondents by rescinding the agreement and dismissed the application filed by the petitioners for extension of time to deposit the balance sale consideration.

2. The learned counsel for the petitioners contended that the petitioners, being the legal representatives, on account of certain justifiable reasons, failed to deposit the balance sale consideration. The application filed for extension of time was dismissed by the Trial Court without any valid reason. According to the learned counsel, the Trial Court committed a jurisdictional error by directing the petitioners to hand over possession after rescinding the contract. The learned counsel contended that the predecessor-in-interest of the petitioners have been in possession and enjoyment of the property as a tenant and not pursuant to the agreement of sale. The Trial Court was therefore not correct in directing delivery of possession.

3. The learned counsel for the respondent by placing reliance on Section 28 of the Specific Relief Act contended that while rescinding the contract, the Court is empowered to put the vendor in possession of the property. The Trial Court was therefore justified in directing delivery of

possession of the property to the respondents.

4. The predecessor-in-interest of the petitioners entered into an agreement of sale with the predecessor-in-interest of the respondents. The agreement was executed on 30.11.1977. The purchaser was in possession of the property even before the agreement.

5. The predecessor-in-interest of the petitioners filed a suit in O.S.No.83 of 1978 for specific performance. The Trial Court passed a judgment and decree directing the predecessor-in-interest of the respondents to hand over the original documents to the plaintiff in O.S.No.83 of 1978 so as to enable him to take a loan of Rs.7,000/- from the Co-operative Bank and thereafter to pay the balance sale consideration. The decree was taken up in appeal in A.S.No.1216 of 1980. The decree was modified by the High Court. The plaintiff was directed to pay the sale consideration within a period of two months. The Vendor was directed to execute the sale deed within a period of three months.

6. The appellate decree was passed on 09.03.1990. It is a matter of record that the decree holder failed to deposit the balance sale consideration within the time prescribed by the Court. The defendant in

O.S.No.92 of 1979 therefore filed a petition in I.A.No.927 of 2004 on 20.11.1997 invoking Section 28 of the Specific Relief Act. The defendant contended that the plaintiff failed to honour the decree passed by the High Court and as such, he has made out a case for rescinding the agreement of sale dated 30.11.1977 and delivery of possession of the suit property.

7. The petitioners, after receiving notice in the application in I.A.No.927 of 2004, filed an application in I.A.No.1545 of 2004 with a prayer to extend the time for depositing the balance sale consideration.

8. Before the Trial Court, the petitioners contended that they were not aware of the events subsequent to the appellate decree on account of the death of the plaintiff. It was their contention that only after receiving notice to bring on record the legal representatives, they were aware of the proceedings pending before the Court.

9.The learned District Munsif by way of a detailed order rejected the contentions taken by the petitioners. There was absolutely no reason to justify the delay in paying the balance sale consideration. The plaintiff was not ready and willing to perform his part of the contract by

paying the balance sale consideration. In fact in O.S.No.83 of 1998, his prayer was to direct the defendant to hand over the original title deeds so as to enable him to take loan and pay the balance consideration. Even then, the Trial Court granted the said request. Even before the Appellate Court, the very same contention was taken by the plaintiff. The Appellate Court also granted reasonable time to deposit the amount. Even then, balance sale consideration was not paid.

10. The learned counsel for the petitioners contended that the requirement of payment of balance sale consideration is only after executing the sale deed. The learned counsel wanted the appellate decree to be read in such a manner that it is only after registration of the property in the name of the petitioner, balance sale consideration would be paid. I am not in a position to agree with the contention taken by the learned counsel. In case, the appellate decree is read in its entirety, it would clearly show that the plaintiff has to pay the entire sale consideration, within a period of two months. The defendant was directed to execute the document within a period of three months, meaning thereby, he was given one month time after payment of balance sale consideration to register the sale deed. No other interpretation is possible in the subject case.

11. The application for rescinding the contract was filed way back on 20.11.1997. The petitioners took about 7 years for filing an application for extension of time to deposit the balance sale consideration. The Trial Court considered all these relevant facts and arrived at a correct decision that the petitioners have not made out a case for extension of time for payment of balance sale consideration. The order is therefore unassailable.

12. The learned District Munsif while allowing the petition filed by the respondents under Section 28 of the Specific Relief Act directed the petitioners herein to deliver vacant possession. The learned District Munsif would be justified in granting such a prayer for delivery of possession, in case possession of property was consequent to the sale agreement. In the subject case, even before executing the sale agreement, the Decree Holder was in possession of the property. There was a clear admission in the plaint and in the written statement with respect to the possession of the property by the Decree Holder prior to the execution of sale agreement. I am therefore of the view that the learned District Munsif was not correct in directing the petitioners to deliver possession of the property.

13. In the result, the order dated 13 August, 2012 in I.A.No.927 of 2004 is modified by deleting the direction regarding delivery of possession. In short, the decree rescinding the contract is upheld. The further direction to hand over vacant possession of the property by the petitioners to the respondents is set aside. The order dated 13 August, 2012 in I.A.No.1545 of 2004 is confirmed. However, I make it clear that the order setting aside the direction to deliver property would not stand in the way of initiating proceedings by the respondents for delivery in accordance with law.

14. The Civil Revision Petition in C.R.P.No.3583 of 2012 is dismissed. The connected revision petition in C.R.P.No.3582 of 2012 is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.06.2017

svki

To

The District Munsif Court, Ponneri.

K.K.SASIDHARAN, J.

(svki)

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3583 of 2012**

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